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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,725	08/31/2001	Roger Dale Hiatt	24221-88-2	1704
21130	7590	03/04/2004	EXAMINER	
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP ATTN: IP DEPARTMENT DOCKET CLERK 2300 BP TOWER 200 PUBLIC SQUARE CLEVELAND, OH 44114			NOLAND, THOMAS	
			ART UNIT	PAPER NUMBER
			2856	
DATE MAILED: 03/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/944,725	HIATT ET AL.
	Examiner	Art Unit
	Thomas P. Noland	2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 November 2003.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-15, 17-19, 23 and 24 is/are pending in the application.  
 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.  
 5) Claim(s) 17-19, 23 and 24 is/are allowed.  
 6) Claim(s) \_\_\_\_\_ is/are rejected.  
 7) Claim(s) 1-8 is/are objected to.  
 8) Claim(s) 1-15, 17-19 and 23-24 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

1. The amendment filed November 21, 2003 has been entered.
2. Newly submitted claims 9-15 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Originally presented and elected claims 1-20 as well as currently presented claims 1-8, 17-19 and 23-24 all required that the cutting die extend from the periphery of the cutting wheel which is not required in claims 9-15 as currently presented. Claims 9-15 as currently presented require a conveying system disposed between a testing apparatus and the sample with the conveying system including first and second strips of material configured to support the sample therebetween and convey the sample to the testing apparatus while originally presented claim 20, which was indicated to contain allowable subject matter, required that the second strip be placed over the sample material such that the sample is sandwiched between the strips. Thus currently presented claims 9-15 do not require the strips to be vertically separated as in original claim 20 since in claim 9-15 the strips could wedge in the sample and only be laterally separated. Thus currently presented claims 9-15 are patentably distinct from originally presented claims 1-20 and restriction by original presentation is proper. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9-15 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.
3. Claims 1-8 are objected to because of the following informalities: In claim 1, line 9 "a" should be --- the --- . Appropriate correction is required.

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4. Claims 1-8 would be allowed if the correction suggested in paragraph 3 above is made.

5. Claims 17-19 and 23-24 have been allowed.

6. This application is in condition for allowance except for the following formal matters:

That set forth in paragraph 3 above. In addition claims 9-15 should either be cancelled or have their restriction out traversed.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Noland whose telephone number is (571) 272-2202. The examiner can normally be reached on weekdays from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Hezron E. Williams, can be reached on (571) 272-2208.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

2/26/04  
Thomas P. Noland  
Primary Examiner  
Art Unit 2856

Noland/ds

02/23/04